

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	CASE NO. 4:19CR3087
	)	
Plaintiff,	)	
	)	
v.	)	<b>BRIEF IN SUPPORT OF THE</b>
	)	<b>MOTION FOR DOWNWARD</b>
NATHAN LEE KEMPTER,	)	<b>DEPARTURE OR VARIANCE</b>
	)	<b>FROM THE SENTENCING</b>
Defendant.	)	<b>GUIDELINES</b>

The Defendant, Nathan Lee Kempster, submits this brief in support of his motion for downward departure or variance from the guidelines.

Mr. Kempster is 34 years old and married to Katherine Elizabeth Thorpe. Mr. Kempster has no children. Mr. Kempster served in the United States Military from 2011 to 2014 when he received an honorable/medical discharge. Mr. Kempster has no prior criminal history whatsoever. He has a good work record and was studying at the Colorado Technical College at the time of his arrest. He completed two years of college at Arapahoe Community College in Aurora, Colorado before joining the Marines.

Most of Mr. Kempster's studies related to computer topics. He has specialized training in circuitry and computer programming, Excel and PowerPoint among others. He also worked in marketing for his father's company, Consistent State, a technology firm. Despite his proficiency with computers and computer gaming, no illegal or inappropriate images of underage children were found on any of the several computers confiscated from Mr. Kempster's home after his arrest.

Remarkably, Mr. Kempster has not experimented with any drugs. He first used

alcohol at age 21, and the presentence report lists his last use on New Year's Eve in 2018. PSR paragraph 61. He has never had mental health treatment or been diagnosed with any mental illness.

The sentencing guidelines are no longer mandatory. *United States v. Booker*, 543 U.S. 220 (2005); *Gall v. United States*, 552 U.S. 38 (2007). Under 18 U.S.C. § 3553(a), the District Court must consider the nature of the offense, history and characteristics of the Defendant, the need to deter criminal conduct, and the need to protect the public from further crimes by the Defendant.

There is a mandatory minimum sentence of ten years for Mr. Kempter's conviction of Count I. 18 U.S.C. §2242(b). This is a significant penalty for someone facing his first exposure to the criminal justice system. Mr. Kempter's actions seem completely out of character considering his past life experiences. He has been active in his church and was close to his pastor. His current incarceration is the only time he has had his liberty taken from him. It is a powerful deterrent to him to ever violate the law.

The court should also consider Mr. Kempter's service to his country in the United States Marine Corps. He served from 2011 to 2014 and received an honorable discharge due to medical reasons. He was stationed in Hawaii and Okinawa as a data analyst and obtained the rank of lance corporal. He had no disciplinary actions while serving in the military. Certainly, this separates Mr. Kempter from many defendants appearing before the court.

While the circumstances surrounding Mr. Kempter's involvement in this case are puzzling, a sentence near the mandatory minimum of ten years with a term of supervised of five years is sufficient, but not greater than necessary, to achieve the statutory goals of

sentencing. No one, least of all Mr. Kempter, disputes the gravity of the offenses and the need for punishment. Mr. Kempter recognizes the harm to C.I. and her family as well as the damage done to his own family. He is extremely remorseful for the consequences of his behavior.

Respectfully submitted  
NATHAN LEE KEMPTER, Defendant,

/s/ David R. Stickman

**DAVID R. STICKMAN**  
**Federal Public Defender**  
222 South 15<sup>th</sup> Street  
Suite 300N  
Omaha, NE 68102  
(402) 221-7896  
Attorney for Defendant